TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 202.

VICENTE SERRA AND MARIA OBLENO, PLAINTIFFS IN ERROR,

vs.

ADRIANO MURTIGA.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

FILED FEBRUARY 9, 1906.

(20,092.)

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1 Supreme Court of the United States, October Term, 1905.

VICENTE SERRA and MARIA OBLENO, Plaintiffs in Error,
v.
UNITED STATES OF AMERICA, MACARIO MERCADER, and ADRIANO MORTIGA, Defendants in Error.

In Error to the Supreme Court of the Philippine Islands.

Proceedings had in the Court of First Instance of the province of Albay, Philippine Islands, and the Supreme Court of the Philippine Islands.

THE UNITED STATES and MACARIO MERCADER in Behalf of Adriano Mortiga
v.
VICENTE SERRA and MARIA OBLENO.

Be it Remembered: That heretofore, to-wit, on the 24th day of February, 1904, in the Court of First Instance of the province of Albay, Philippine Islands, came Macario Mercader, as attorney in behalf — Adriano Mortiga, and filed in the clerk's office of said court a complaint signed and sworn to by them, against Vicente Serra and Maria Obleno, which complaint is in the words and figures following, to-wit:

"THE UNITED STATES OF AMERICA,
Philippine Islands, Eighth Judicial District:

In the Court of First Instance of Albay.

THE UNITED STATES and MACARIO MERCADER in Behalf of Adriano Mortiga
v.
VICENTE SERRA and MARIA OBLENO.

2 The undersigned, a practicing attorney, in behalf of Adriano Mortiga, the husband of Maria Obleno, accuses Vicente Serra and the said Maria Obleno of the crime of adultery, committed as follows:

That on or about the year 1899, and up to the present time, the accused, being both married, maliciously, criminally and illegally lived as husband and wife, and continued living together up to the present time, openly and notoriously, from which illegal cohabitation two children are the issue, named Elias and José Isabelo, without the consent of the prosecuting witness, and contrary to the statute in such cases made and provided.

(Signed) MACARIO MERCADER,
Attorney at Law.

(Signed) ADRIANO MORTIGA.

Albay, February 24, 1904.
1—202

Sworn and subscribed to before me this 24th day of February, 1904.

(Signed) F. SAMSON, *Clerk.*

Witnesses:
ADRIANO MORTIGA.
BERNARDO MORTIGA.
EULALIO MORTIGA.
PLACIDO SOLANO.
CASIMIRA MARIAS.

Afterwards, to-wit, on the 24th of February, 1904, the defendants Vicente Serra and Maria Obleno were arraigned in said Court of First Instance, before the bar of said court, and pleaded not guilty, and the trial of said cause was set for the 25th of February, 1904.

Afterwards, to-wit, on the 25th of February, 1904, the defendants Vicente Serra and Maria Obleno appeared in the Court of First Instance of the province of Albay, and gave bail for their appearance in said court.

Afterwards, to-wit, on the 25th of February, 1904, the said defendants Vicente Serra and Maria Obleno were tried before the Honorable Arthur F. Odlin, Judge of the Court of First Instance of said province, without a jury, and the following evidence was introduced:

3 ADRIANO MORTIGA, a witness called on behalf of the prosecution, being duly sworn, testified as follows:

Direct examination.

By the COURT:

Q. What is your name?
A. Adriano Mortiga.
Q. Where are you from?
A. From Camalig.
Q. Of this province?
A. Yes sir.
Q. Are you married or single?
A. I am married.
Q. When were you married?
A. On the 25th of May, 1896.
Q. In what town were you married?
A. In Camalig.
Q. Married by the Church?
A. Yes sir.
Q. Have you a marriage certificate?
A. Yes sir.
Q. What is the name of the priest who married you?
A. Father Tortolino.
Q. What is the name of the present priest of Camalig?
A. His name is Iginio Alamo.
Q. What is the name of the woman whom you married?
A. Maria Obleno.

Q. Where is she now?
A. She is here.
Q. How long have you lived together?
A. For over a year.
4 Q. When did you separate from her?
A. After I had lived with her for about a year and a half.
Q. Have you lived with her since?
(No answer).
Q. And you married her in '96, did you not?
A. Yes sir.
Q. And you stopped living with her in '97
A. After '97 I asked my wife to come and live with me, because I intended to live with her, but she refused.
Q. Then Maria has not lived with you since '97?
A. No sir.
Q. Who is she living with now?
A. With Vicente Serra.
Q. Is he present here?
A. Yes sir.
Q. Do they live in the same house?
A. Yes sir.
Q. Where?
A. In Camalig.
Q. How long is it since they have been living together?
A. Since '99.
Q. Five years ago?
A. Yes sir.
Q. With your consent?
A. Not with my consent. I was afraid to bring any judicial proceedings against them because Vicente, in the times of the revolutionary government, was a major to General Paua, in this province, and I was very much afraid of the accused.
Q. When did Paua surrender?
A. Upon the arrival of the American government.
5 Q. It is two or three years ago since Paua ceased to be a chief, is it not?
A. Yes; since the Americans came he ceased to be a chief.
Q. When the Americans came, and when Paua ceased to be a chief, why didn't you complain to the court?
A. Because the accused held an official position under the American government. He was Chief of Police of Camalig.
Q. What has the chief of police got to do with the court?
A. As he was the chief of police I tried to avoid any trouble with him, because he used to go into the mountains armed.
Q. Didn't you have confidence in the judge of Albay?
A. Yes sir, I had.
Q. If you had confidence in the judge of this province, why didn't you present your complaint to him?
A. As the accused continued to hold his office I feared his revenge, but now that he is no longer a public official I have presented my complaint.

Q. Didn't you think that Judge Carson would have protected you against the accused?

A. I thought so, but as he was still the chief of police I avoided any trouble, because I feared that he would have revenge upon me.

Q. I want you to understand that Judge Carson, as well as the present judge, the Honorable Grant Trent, can protect and will protect any person who wishes to file a complaint against any other person.

A. At that time I avoided any possible trouble, because the accused always carried a revolver, and as evidence of this fact I will
6 cite an instance where he went into the mountains and shot a person there.

Q. Does he carry a revolver now?

A. Not now, because he is an ordinary citizen.

Q. Then you knew that your wife had been living with the accused, Vicente, for several years, did you not?

A. Yes sir, since '99.

Q. You state in your complaint that two children have been born as the result of the relations existing between Maria and Vicente; is that so?

A. Yes sir.

Q. How do you know that?

A. I have taken out their certificate of baptism.

Q. (After examining certificates): I see here the name of the mother, but I can not find the name of the father. How do you know that Vicente is the father of Elias, the child?

A. Because Maria Obleno is living in the same house with Vicente Serra.

Q. Can you swear that you are not the father of Elias?

A. Yes sir.

Q. Do you swear that you have not had any intercourse with her since '99?

A. Yes sir.

The COURT: The prosecution may examine the witness.

By the PROSECUTION:

Q. How long have you been living apart from Maria?

A. Since '97.

Q. What was the reason for your separation?

A. The reason for our separation was because I talked to my wife while we were in town, and told her that we had better move to Baligan, where we have a tract of land, and my wife, as well as my mother-in-law, objected very strongly. My mother-in-law
7 gave me twelve lashes with a whip. I insisted, however, but they refused to go with me to Baligan. I then left the house of my mother-in-law and went to Baligan alone.

Q. How long did you and Maria live together as husband and wife?

A. For over a year.

Q. During that time have you had any trouble with your wife?

A. No sir.

Q. Do you know the accused, Vicente Serra?
A. Yes sir.
Q. How long has he been living with your wife?
A. Since '99.
Q. What did you do when you learned that they were living together? Did you consent to it?
A. No sir.

The PROSECUTION: That's all.

Cross-examination.

By COUNSEL FOR THE DEFENSE:

Q. State whether or not it is true that since the accused, Vicente Serra, went to live with his codefendant, Maria Obiena, you knew of it.
A. Yes sir.
Q. Is it not a fact that they have been living together for about four years?
A. Since '99.
Q. Isn't it a fact that they have been living openly together, and that everybody in Camalig knew about it?
A. Yes sir; it was a matter of public knowledge.
Q. Isn't it a fact that you have tolerated this illegal co-
8 habitation of the accused?
A. I consented to it then because the accused was "a man of rank." He was a major.
Q. So that you had knowledge of the illegal relation existing between the accused?
A. During the revolutionary government I apparently consented to it.
Q. That isn't the question: I asked you whether or not you had knowledge of the illicit relations existing between the accused?
A. That was because he was a major at that time. I couldn't do anything to him, but now, of course——
Q. Isn't it a fact that you knew of this illicit relation long prior to that time, and that you were also aware of the fact that it was a grave offense to your honor and reputation, as well as an act punishable by law?
A. Yes sir.
Q. You have stated that you never consented to the illegal cohabitation of the accused. Is it not likewise true that you never opposed it?
A. I always opposed it.
Q. Were you ever opposed to it?
A. Yes sir, but I couldn't make any complaint against the accused at that time, because he was a man of rank.
Q. Why could you not make any complaint against the defendant, Vicente Serra, when he was a public official?
A. I was afraid that he would shoot me.
Q. Were you ever threatened by the accused, Vicente Serra?
A. No, because I always avoided him.

Q. So that your fear was merely apparent, imaginary,
9 was it not?

A. Yes sir. I don't mean to say that the accused ever did anything to me.

Q. You have stated under oath that the accused was married. How do you know that?

A. The whole town of Camalig knows of this fact.

Q. But you personally, how do you know that?

A. I know it because it is a matter of common knowledge that the accused is married.

Q. Then you state that the accused, Serra, is married, because you know that he is?

A. Yes sir.

Q. Were you present at the time the accused was married to his wife?

A. No sir, but as it is a matter of public knowledge in Camalig, I know it too.

Q. You have stated that in '97 you separated from your wife, Maria Obleno: Isn't it a fact that you abandoned her, for good, since?

A. That was exactly the date when we separated, because I asked her to come with me, and she refused to go to the place where I wanted to go.

Q. Isn't it a fact that since that date you and Maria Obleno have lived independently, one from the other?

A. I lived with my parents, and she lived with hers.

Q. Whose parents?

A. Her parents.

Q. So that since then you have lived an independent life have you not?

A. I did not intend to live apart from her, but during the revolutionary government I learned that she had gone to live
10 with her codefendant.

Q. If it was your intention to live together, why did you live apart from her for about three years—that is to say, from '97 to '99?

A. We were not separated for three years. We were only separated for about a year and a half; from '97 to '99; that is over a year.

Q. If your intention was not to live apart from your wife, why did you not join her after that time?

A. Because her parents did not want her to follow me, and I didn't want to live with her parents.

Q. Isn't it a fact that your wife refused to go with you?

A. Yes sir, she did?

Q. How long was Vicente Serra chief of police?

A. Up to the first reconcentration of the people.

Q. In what year, about?

A. When Anacleto Lolano was president.

Q. Is it two or three years ago?

A. It is not quite three years ago. It is about two years.

Q. Two years, eh. When the defendant Vicente ceased to be

chief of police there was no further reason for your fear in presenting your complaint against him. What other reason, if any, did you have for not presenting the complaint?

(No answer.)

COUNSEL FOR DEFENSE. I call the attention of the court to the fact that the witness meditates much before answering my questions, and this may prejudice the interest of my client.

The COURT: Please answer the question.

11 I did not file a complaint then because after he ceased to be a public official he usually carried a revolver.

Q. How long did he continue to carry a revolver?

A. Not very long, because the lieutenant took it away from him.

Q. Why didn't you present your complaint immediately after the lieutenant took his arms away from him, and why did you wait two years before filing your complaint?

A. I left things as they were because this happened at the time of the reconcentration, and the people in Camalig hardly had anything to eat.

Q. When you learned of the adultery of your wife, what impression did it make upon you? Did it make you feel sorry?

The COURT: The question is disallowed.

Q. If you feel sorry——

The COURT: The question is disallowed.

Q. Have you had an opportunity to talk to the accused, Serra, since 1899?

A. No sir.

Q. Have you ever met at the same place?

A. I have seen him at Camalig, but I have never talked with him.

Q. Did your wife consent to be married to you willingly?

(No answer.)

The COURT: The question is disallowed. It is not important.

COUNSEL FOR DEFENSE: That's all.

By the COURT:

Q. What witnesses have you who will testify to the fact that the accused lived together?

A. Eulalio Mortiga.

Q. A relative of yours?

12 A. Yes sir.

Q. Any witness who is not a relative of yours?

A. Placido Solano.

The COURT: Let Placido Solano take the stand.

PLACIDO SOLANO, a witness called on behalf of the prosecution, being duly sworn, testified as follows:

Direct examination.

By the COURT:

Q. What is your name?
A. Placido Solano.
Q. Where do you live?
A. In Camalig.
Q. Your occupation?
A. Farmer.
Q. Are you a relative of Adriano Mortiga?
A. No sir.
Q. Do you know Maria Obleno?
A. Yes sir.
Q. Where is she living now?
A. In Camalig.
Q. In whose house?
A. In my house.
Q. Who is living in the house with her?
A. Her parents.
Q. What are their names?
A. Marta Navarez. Vicente Serra also lives there.
Q. Who is Vicente Serra?
A. This one here (indicating the accused).
13 Q. Why is Vicente living with Maria in the same house?
A. I have seen them living together in the same house.
Q. The two of them?
A. Yes sir.
Q. Both of them living in the same room?
A. Yes sir, in the same house.
Q. Do you know of any relations existing between Vicente and Maria?
A. No sir.
Q. What is the general opinion of the people in town in regard to them?
A. That they live together.
Q. Is there a child in the same house?
A. Yes sir.
Q. What is his name?
A. José. The other one died.
Q. How old is José?
A. He is about a year old.
Q. Who is his mother?
A. Maria Obleno.
Q. Who is his father?
A. Vicente Serra.
Q. How do you know it?
A. Because it is a matter of public knowledge.
Q. And it is considered by the people that Vicente is the father of José?

A. Yes sir.
Q. Does Vicente treat the child as his son?
A. Yes sir.

The COURT: The prosecution may examine the witness.

14 By the PROSECUTION:

Q. How long have you known the accused, Vicente Serra?
A. Since the time of the revolutionary government.
Q. Do you know whether or not he is married to another woman?
A. I know nothing about that.

The PROSECUTION: That's all.

Cross-examination.

By the DEFENSE:

Q. In what year did you become acquainted with the defendant, Vicente Serra?
A. During the time of the revolutionary government.
Q. Can you state the date?
A. I can not. I don't remember.
Q. About when, four years ago? Is it four years ago since you met the defendant Vicente Serra?
A. About four years ago.
Q. Isn't it a fact that when you met him for the first time he was living with his codefendant Maria Obleno?
A. Not at that time.
Q. How long after you had met him did he commence to live with the accused?
A. About a year after.
Q. How long have the defendants been living together?
A. Some four years.
Q. Isn't it a fact that it is well known to the citizens of Camalig that the defendants have been living together as husband and wife?
A. Yes sir.
Q. Isn't it a fact that this was so notorious and public
15 that even her husband knew it?
A. I don't know whether her husband knew of it.
Q. Do you know Adriano Mortiga?
A. Yes sir.
Q. Do you know what sort of a relation existed between Adriano Mortiga and Maria Obleno?
A. The relation of husband and wife.
Q. Is it not true that Adriano Mortiga was not ignorant of the fact that his wife was living with Vicente Serra?
A. I don't know whether he was ignorant of it or not.
Q. What is your belief, that he did or that he did not?
A. He being her husband, it is very probable that he knew it.
Q. Isn't it true that Adriano Mortiga never opposed this union?
A. I don't know anything about that.
Q. Isn't it true that Adriano Mortiga and his wife never had any trouble, notwithstanding the fact that he knew that she was living with another man?

A. I don't know whether they had any trouble or not.
Q. How long did the defendant Maria Obleno live with her husband, Adriano Mortiga?
A. I don't know.

The DEFENSE: That's all.

By the COURT:

Q. Do you know whether or not Adriano and Maria lived together for about a year after they were married?
A. I do not.
Q. Do you know whether Adriano is the true husband of Maria?
A. Yes sir.
Q. How do you know that?
16 A. Because I attended the wedding.
Q. You were living in town when Adriano and Maria were married, were you not?
A. Yes sir.
Q. Where was Vicente on that day?
A. He was not there then.
Q. Was he living in another town?
A. He was not in the town of Camalig.
Q. When did he commence to live in town?
A. During the revolutionary government.
Q. Can you state the year?
A. I don't remember very well.
Q. Did you ever meet Father Tortolino?
A. Yes sir.
Q. When did he, the Father, leave the town?
A. When the revolutionists arrived there.
Q. Did the priest leave the town?
A. Yes sir.
Q. Was it public opinion that Adriano Mortiga was the husband of Maria?
A. Yes sir.

The DEFENSE: If the Court please, I wish to ask a question of the witness.

Q. Vicente was the chief of police, was he not?
A. Yes sir.
Q. How long?
A. For more than six months.
Q. Have you ever seen Vicente and Adriano talking together?
A. No sir, I have not.

The DEFENSE: That's all.

17 The COURT: Let Adriano take the stand.

ADRIANO MORTIGA, recalled.

By the COURT:

Q. Did the defendant Vicente know that you were the husband of Maria?
A. It may be that he did, because everybody in town knew that she was my wife.

Q. After you married did you live with Maria, or did she live alone?
A. She lived with her mother.
Q. Did Maria leave your house and go to her mother's house?
A. Maria always lived with her mother.
Q. Then you left Maria's mother's house, did you not?
A. Yes sir; I asked permission to go and see my hemp fields.
Q. During the time you and Maria lived together, in what house did you live?
A. After we were married we lived in my mother's house, and later went to the house of my wife's mother, and while I was there I asked permission to look after my hemp fields, and she refused to follow me.
Q. Then she remained at her mother's house, did she not?
A. Yes sir.
Q. And is Maria still living at her mother's house?
A. Yes sir.
Q. And does Vicente live with her in the same house?
A. Yes sir.
Q. How long after you left Maria's house did Vicente come in?
18 A. About the latter part of '97 I left the house of the mother of my wife.
Q. And when did Vicente come in?
A. Some time in '99.
Q. Then Maria lived for about a year or more without a husband, without a man?
A. Yes sir. She lived with her parents alone.

The COURT: That's all. Call the witnesses for the defense.

JOSÉ VELOTE, a witness called on behalf of the defense, being duly sworn, testified as follows:

Direct examination.

By the COURT:

Q. What is your name?
A. José Velote.
Q. Where do you live?
A. In Camalig.
Q. What is your occupation?
A. Agriculturalist.

The COURT: Counsel for the defense may examine the witness.

By the DEFENSE:

Q. How long have you lived in Camalig?
A. Since '97.
Q. Prior to that time did you ever live in that town?
A. Yes sir.
Q. How long?
A. For many years; for about twenty years.

Q. How long have you resided in the province?
19 A. I have lived in Camalig for about twenty-seven years.
Q. Do you know the defendants Vicente Serra and Maria Obleno?
A. I do.
Q. Do you know anything about the relations existing between them?
A. Yes sir.
Q. What are they?
A. I think they are living together as husband and wife.
Q. How do you know that?
A. Because they live in the same house.
Q. If they have lived together, as you say, have they had any issue?
A. I think so.
Q. Are you certain of it?
A. Yes sir.
Q. Do you know whether this is known to the people of the town?
A. Yes sir.
Q. Do you know Adriano Mortiga?
A. Yes sir.
Q. Do you know where he is now?
A. Yes sir.
Q. Where?
A. Here in court.
Q. Do you know whether Adriano, the prosecuting witness, knew of the illicit relations existing between the defendants?
A. Everybody knew about it, and I think that he, better than anybody else must have known.
Q. How long have the defendants been living together, to your knowledge?
20 A. Since '99.
Q. How many years have they lived together?
A. For more than four years.
Q. Did Adriano Mortiga consent to it?
A. If from the fact that he allowed it to go on we may infer that he consented, I think that he did.

By the COURT:

Q. You suppose so, is that it?
A. In as much as he never opposed it, I think he did.

By the DEFENSE:

Q. Do you know that Adriano Mortiga was ever opposed to it?
A. I do not.
Q. During the four years that the defendants have been living together has the prosecuting witness, Adriano Mortiga, ever opposed the defendants living together?
A. Not to my knowledge.

Q. State whether or not Adriano Mortiga has ever consented to his wife living with the defendant.

A. I have already answered that question: I have said that if from the fact that he allowed them to do it it might be inferred that he consented, in my opinion he consented to it.

Q. Do you know whether Adriano Mortiga knew that his wife was living with the defendant from the very time they commenced to live together?

A. I think that he did.

Q. Do you know what relations existed between the accused and Adriano Mortiga?

A. I do not.

Q. Are they friends?

A. I do not think they are friends?

Q. Are they enemies?

A. I don't think so.

21 Q. Did you ever see the defendants Serra and Adriano Mortiga together?

A. No sir.

Q. When did Adriano Mortiga separate from his wife?

A. In '96.

Q. Are you sure of that?

A. Yes sir.

Q. Do you know when they were married?

A. I do not, because I was not there prior to '96.

Q. And when you lived there, had they already separated, that is, in June, '96?

A. They were not living together at that time.

Q. That is to say, in June, '96, they were not living together, is that it?

A. Yes sir.

Q. Have you ever seen Adriano Mortiga and the defendant Serra together in any gathering?

A. No sir.

The DEFENSE: That's all.

Cross-examination.

By the PROSECUTION:

Q. Just one question: Isn't it a fact that Adriano Mortiga was very much displeased with the action of his wife?

The COURT: The question is not important: the question is whether the law has been violated or not.

The PROSECUTION: That's all.

The COURT: Let another witness take the stand.

22 MARTA NAVARES, a witness called on behalf of the defense, being duly sworn, testified as follows:

Direct examination.

By the COURT:

Q. State your name.
A. Marta Navares.
Q. Where do you live?
A. In Camalig.
Q. Do you know the defendant Maria Obleno?
A. Yes sir.
Q. What relation are you to her?
A. She is my daughter.

The COURT: The defense may examine the witness.

By the DEFENSE:

Q. What is the present status of Maria Obleno?
A. She is living with Vicente Serra as his wife.
Q. How long has she been living with Vicente Serra?
A. About four years.
Q. Prior to this time has Maria Obleno been molested by any one?
A. Molested? Why?
Q. By somebody?
A. I don't understand the question. Molested?

The COURT: The Court excludes all of the testimony introduced by the defense upon the theory that Adriano, the husband of Maria, may have lost his rights by the lapse of time?
The DEFENSE: Exception.

By the COURT:

Q. Are you the mother of the defendant, Maria?
A. Yes sir.

23 Q. And Adriano is the legal husband of Maria, is ne not?
A. Yes sir.
Q. And after they were married they lived together for some time, did they not?
A. After they were married they never lived together. Never, sir.
Q. Why were they married if they never lived together a single day?
A. No sir. Maria didn't even speak to Adriano.
Q. Were you at the church when they were married?
A. Yes sir.
Q. At what time?
A. One Monday morning.
Q. Did they leave the church together?
A. No sir, they didn't even go to church together.
Q. Didn't they leave the church together?

A. No sir; the woman left the church first.
Q. And Adriano followed?
A. I didn't see him leave the church.
Q. When Maria left the church where did she go to?
A. She went to my house.
Q. And Adriano, where did he go to after he left the church?
A. He also went to my house.
Q. How long did they remain at your house?
A. Some two or three weeks.
Q. Then Adriano lived at your house for two or three weeks as the husband of Maria, did he not?
A. Yes sir.
Q. Both of them lived in the same room, did they not?
A. No sir.
24 Q. Weren't they legally married?
A. Yes, they were married, but the woman did not say a word during the ceremony.
Q. Didn't she sign some document connected with the marriage?
A. I don't know.
Q. Didn't you hear the priest say that they were both joined in wedlock?
A. Yes sir; the priest usually says so.
Q. Then when they lived at your house Maria was the wife of Adriano, was she not?
A. Yes sir, because they talked about marriage.
Q. And both of them lived together for about two or three weeks?
A. Adriano did not live at my house steadily, because he used to go in the morning to Balingan, and sometimes he didn't come back to the house in the evening. Although he was in the house he was considered as a stranger. He never had intercourse with her.
Q. Both of them were married in May, and in the evening Maria slept at your house, did she not?
A. Yes sir.
Q. Did Adriano sleep there too?
A. Yes sir.
Q. Did they sleep together?
A. No, sir.
Q. Why not? If both of them were married why didn't they sleep together?
A. Because the woman didn't want the male to approach her, and notwithstanding the efforts of the latter he couldn't do anything, because she refused to.
25 Q. Maria slept in one room and Adriano in another room, eh?
A. No; they slept in the same room, but Adriano was separated from Maria.
Q. Then they never had a connection, did they?
A. Never.
Q. Is such the custom of the country, or is it contrary to the custom of the country?
A. Well, the custom here is also that the woman have connection

with the man, but Maria was married simply because her father insisted on it.

Q. Is her father living?

A. He is dead.

Q. When did he die?

A. About a year after the Americans entered this province.

Q. When did Vicente commence to live at your house?

A. During the time of the revolutionary government Vicente was not living in my house, notwithstanding the fact that he was engaged to Maria.

Q. When were Maria and Vicente engaged?

A. At the time the Americans entered the province, when they eloped, and went to Santa Cruz de Marinduque.

Q. At the time the relations between Maria and Vicente commenced was her father living?

A. Yes sir.

Q. You have said that Maria married Adriano because she was afraid of her father?

A. Yes sir.

Q. Did she marry against her will?

A. Yes sir.

26 Q. Was Adriano married against his will?

A. I am unable to say, because he had nothing to do with Maria.

Q. You mean to say that Adriano never spoke to Maria?

A. Yes sir; not even for a second.

Q. Why did Adriano marry Maria if he didn't love her?

A. I can not say why.

Q. Do you swear that Adriano never had intercourse with his legal wife?

A. Yes sir.

Q. Are you sure of that?

A. I am.

Q. Isn't that a strange thing?

A. It is, indeed, between people who love each other, but as this couple didn't love each other I see nothing strange in it.

Q. Have you ever heard of a similar case in the Philippine Islands?

A. I know of a case in the same town where a couple was married and separated afterwards, but as the husband was a good man they finally made up again.

Q. But have you ever heard of people married by the Church, who lived as husband and wife in the same house, and never had any sexual intercouse?

A. Yes sir, I have also heard of a case like that in the town of Camalig. After the parties were married they refused to go together, but as the husband was a good man and was kind to his wife, they finally united.

Q. Supposing that no relation existed between Adriano and Maria as husband and wife, do you think that Maria had a right to go and live with another man?

27 A. It seems to me that she has not, but my daughter never considered herself as married to that fellow.

Q. When a girl goes to the church, and they go before the priest, doesn't the woman consider herself married?

A. Certain people get married because their parents so desire, and there are other people who marry of their own accord; that is to say, because they love each other.

Q. When people go to the church and the priest tells them that they are married, is it not a legal marriage, always?

A. Yes, when they love each other it is.

Q. Then the priest has no power to marry two persons who do not love each other, is that it?

A. Certainly he has provided they notify the priest beforehand that they don't love each other.

Q. Were you at the church at the time they were married?

A. Yes sir.

Q. Did the priest ask Adriano whether he was willing to accept Maria as his wife, and did he ask the same question of Maria?

A. Yes sir.

Q. And Maria answered that she did, eh?

A. No sir.

Q. You mean to say that the priest declared them to be husband and wife, notwithstanding the fact that Maria refused to become his wife?

A. She didn't refuse at the ceremony; neither did she assent to it.

Q. Did she consent to go to the church?

A. If she went to the church it was because her father beat her.

Q. Do you mean to say that Maria married him because
28 force was employed? That is to say, because her father compelled her to?

A. Yes sir.

Q. Did Vicente know that Maria and Adriano had been to the church together?

A. It seems that Vicente did not know anything about it, because he arrived long after the marriage.

Q. But didn't everybody in town know about it?

A. I don't know anything about that.

Q. Maria knew that she had been to church, did she not?

A. Yes sir, but it was against her will. She didn't consider herself married.

Q. Has Adriano ever objected to Maria living with Vicente?

A. I can not say that Adriano has consented to it, nor can I say that he has objected to it, because he lives in the town of Camalig, and since Vicente and Maria have been living together he and Vicente have met and talked to each other several times.

Q. Who? Vicente and Adriano have talked to each other in your presence?

A. In the house of my other daughter.

Q. Have you ever heard Vicente talking with Adriano?

A. Yes sir, because whenever there is a dance at the house of Captain Pablo Adriano and Vicente always attend.

Q. What did Adriano say?

A. I saw them talking.

Q. Can you state something about the conversation between them?

A. I can not. I always saw them smiling at each other.

Q. Do you know anything about a divorce between Maria and Adriano?

A. I learned of it when it was all done.

Q. Who asked for the divorce?

A. My daughter Maria, and the deceased Guillermo Nieves was the one who drew up the document.

Q. To whom was the petition addressed?

A. To the presidente, Domingo Valenciano.

Q. President of what?

A. President of Camalig.

Q. The president of the town. What has he got to do with the matter of divorce? Was he a judge, or was he the pope?

A. No sir; he simply transmitted the petition to the Board, and thence to the vicar's office, and thence to Nueva Caceres, where the bishop was.

Q. What was the result of the petition for divorce?

A. I know nothing about the result.

Q. Were you ever informed that the divorce had been granted?

A. The vicar general, an ecclesiastical judge at Nueva Caceres, notified the priest of the town that the divorce had been granted. Two months later notice was received of the final decision, but I don't know what the result was.

The COURT: I desire to ask some questions of Adriano.

ADRIANO MORTIGA, recalled.

By the COURT:

Q. Do you know Maria's mother?

A. Yes sir.

Q. She says that Maria went to the church against her will; that she didn't want to marry you, but she was compelled to by her father?

A. If she hadn't loved me she wouldn't have gone to the church.

Q. The mother also says that you never had any sexual intercourse with her; is that so?

A. Yes sir, we did have.

Q. When, for the first time?

A. After the marriage ceremony.

Q. On what night, the first night?

A. No, the second night.

Q. How long did you live at the house of Maria's parents?

A. For about seven months.

Q. Maria's mother says that you only lived there for about a week.

A. No sir.

Q. Who is right; You, when you say seven months, or your mother-in-law, when she says two weeks?

A. My mother-in-law lies.

Q. It is the custom in the United States for a man and a woman to have sexual intercouse the first night after they get married. What is the custom in the Philippines?

A. That is exactly the custom in this country.

Q. Why was there an exception? Why was there a change of custom in the case of you and Maria?

A. Because the first night there were too many people at the house, and we were in the hall.

Q. But you can swear that you had connection with her the first night?

A. Yes sir.

Q. The mother swears that you never had connection with
31 Maria. Is she mistaken?

A. It may be that she is mistaken.

Q. Do you solemnly swear that you had intercourse with Maria the second night?

A. Yes sir.

The COURT: That's all. Let another witness take the stand.

GREGORIO SANTILLON, a witness called on behalf of the defense, being duly sworn, testified as follows:

Direct examination.

By the COURT:

Q. What is your name?
A. Gregorio Santillon.
Q. Where do you live?
A. In Camalig.

The COURT: The defense may examine the witness.

By the DEFENSE:

Q. Do you know the defendants, Maria and Serra?
A. Yes sir.
Q. Do you know Adriano Mortiga?
A. Yes sir.
Q. What sort of relations exist between Adriano and Maria?
A. Adriano is married to Maria.
Q. Have you seen Maria living with Vicente with the consent of Adriano?
A. Inasmuch as he has left him alone, and everybody in the town of Camalig knows about it, I presume he has.

Q. You don't know that he has given his consent, but
32 you presume that the consent exists?

A. Yes sir.

Q. Have you seen Adriano and Vicente together?
A. Yes sir.
Q. What were they doing?
A. They were together.
Q. When?
A. They were together; that's all I know.

Q. Are they friends or enemies?
A. I don't know whether they are enemies.
Q. How long have you lived in Camalig?
A. Since 1890.
Q. How many years, more or less?
A. Some fourteen years.
Q. How long, to your knowledge, have the accused been living together?
A. Since '99.
Q. Four years, or about?
A. Yes sir.
Q. Is it publicly known there?
A. Yes sir, I think it is, because it has come to my knowledge.
Q. When it came to your knowledge did you ascertain whether it was true or not?
A. Yes sir, I know it, because both defendants had a child.
Q. During the four years that the accused lived together do you know whether the prosecuting witness has objected to it?
A. No sir, not to my knowledge.
Q. Do you know whether or not the prosecuting witness was ignorant of the fact that the defendants were living together?
33 A. I don't think he was.
Q. Do you know whether or not Vicente has been the chief of police?
A. Yes sir, he was.

The DEFENSE: That's all.

By the COURT:

Q. Do you know whether Adriano objects to it at the present time?
A. Yes sir.

The COURT: Let another witness take the stand.

MARIA OBLENO, one of the defendants, called as a witness on her own behalf, being duly sworn, testified as follows:

Direct examination.

By the COURT:

Q. State your name?
A. Maria Obleno.
Q. Where do you live?
A. In Camalig.
Q. Are you one of the defendants in this case?
A. Yes sir.

The COURT: The defense may examine the witness.

By the DEFENSE:

Q. Do you know Adriano Mortiga?
A. Yes sir.

Q. What relationship exists between you and Mortiga?
A. None whatever.
Q. Don't you remember having married him?
A. I do.
34 Q. How long did you live with him?
A. We never lived together because I never recognized him as my husband.
Q. Are you living with him at the present time?
A. No sir.
Q. Why are you living apart from him?
A. Because it was against my will that we were married. I was forced to marry him.
Q. How were you forced to marry him?
A. Adriano's parents asked my parents to have me marry Adriano, and as I desired to obey my parents, I married him, but nevertheless against my will.
Q. When did you separate from Adriano Mortiga?
A. After he had been in my house for several weeks.
Q. From the time you separated from your husband to the time you went to live with Vicente Serra did you receive any support or assistance from your husband?
A. No sir, I never received any support whatsoever since '96, the year in which we separated.
Q. So that since then you have lived apart?
A. Yes sir.
Q. How long have you lived with Vicente Serra?
A. Since '99.
Q. Is it public that you are living with him?
A. Yes sir.
Q. Was your husband aware of it?
A. Yes sir, because he lived in the same town of Camalig.
Q. Were you ever rebuked by him for what you did?
A. No sir.

The DEFENSE: That's all.

By the COURT:

Q. Do you want the Court to believe that Adriano con-
35 sented to your living with Vicente?
A. It seems to me that he has consented, because he lived in the same town and knew all about it.
Q. Before you went to live with Vicente did you ask Adriano's permission?
A. I did not, because I never thought that he was my husband, and I was fully convinced of that.
Q. Then in your opinion the marriage ceremony did not amount to anything?
A. It didn't so far as I was concerned.
Q. Did you sue for divorce later?
A. Yes sir.
Q. If you considered that the marriage ceremony had no legal effect whatever, why did you sue for divorce?

A. I sued for divorce because the Vicoles (native inhabitants of the province) thought that I was married to Adriano, and in order to convince the people that I was a free woman, and that was my opinion, I sued for divorce.

Q. Have you ever had any sexual intercourse with your husband?

A. Never in my life, sir.

Q. Then you went to live with Vicente without saying anything to Adriano?

A. Yes sir.

Q. You thought that Adriano had nothing to do with you, did you not?

A. Yes sir.

Q. Did Vicente ask Adriano for permission to live with you?

A. No sir.

Q. Then there was no consent on the part of Adriano?

36 A. No sir.

Q. Do you pretend to say that there was implied consent?

A. Yes sir, because he didn't file a complaint until now.

Q. From the fact that Adriano failed to file a complaint against you, you inferred that he had consented, did you not?

A. I don't know, sir. I thought I was free.

Q. Then you thought that Adriano's consent was not important, did you not?

A. Yes sir, because I never recognized him as my husband.

Q. Then you thought that you had a right to live with Vicente, irrespective of Adriano's wishes, did you not?

A. Naturally so, because I didn't take him to be my husband.

Q. Then your defense is entirely different than that of your attorney?

(No answer).

Q. Then you pretend to say that you didn't consider him to be your husband, and that he had no control over you?

A. I never thought he was my husband.

Q. Then you thought that you had a right to live with Vicente without Adriano's consent, because you thought that your marriage had no legal force?

A. Yes sir.

Q. And notwithstanding the fact that you thought that the marriage was null, you petitioned for divorce, did you not?

A. I asked for a divorce four years later.

Q. And when your attorney stated that Adriano had given his consent you did not pretend to set up such a defense, did you?

37 A. It seems to me that he did consent, because he lived right there.

Q. But you have already stated that Adriano's consent was of no value to you, and that he had no control over you, because you didn't consider yourself married?

A. Yes sir; I did not recognize him as my husband.

The COURT: The prosecution may examine the witness.

PROSECUTION: That's all.

The COURT: Next witness.
DEFENSE: That's all.
Prosecution rests.
Defense rests.

Afterwards, to-wit, on the 25th day of February, 1904, the following decision was rendered by the Honorable Arthur F. Odlin, judge of the said Court of First Instance of Albay, and filed in the clerk's office:

Decision.

This is a very peculiar case, and shows many things strange to me. The arguments of counsel were very able, but I think that if the defendants were to be acquitted it would be a sad day for the social life of the Philippine Islands. The case is very important, but not difficult, and therefore I shall state my opinion upon the law applicable, as I understand it.

In the first place it is contended that the marriage was not consummated. The husband swears that it was and the wife swears that it was not. The Court must decide between the two con-
38 tradictory statements. Although it is true that Adriano does not seem to be a courageous man, my impression is, from the manner in which he has testified, and his antecedents, that his story of the case is more reasonable than that of his wife. As to the statement of the mother of the defendant Maria, it is very probable —it is even certain that the sexual intercourse, if there was any, took place during the absence of the mother, and being convinced that a man could not live for a long time in the same house with his wife without having sexual intercourse with her, it is not possible to believe the testimony of the wife; furthermore the defendant Maria and her mother testified that Adriano had lived with Maria for a very short time, for about two or three weeks, but Maria's husband testified that they were married in 1896, and did not separate until 1897, and therefore there is a further reason for believing Adriano and not Maria. In the second place the law forbids a complaint for adultery to be filed by a husband who arbitrarily deserts his wife against her will. The case at bar is different. Instead of deserting his wife, Adriano swears that he left the house of the defendant's mother in order to live with her in another house, but that she refused to go with him. This is not therefore desertion. In the third place, the most difficult question in this case is that concerning the consent of the husband. It is true that implied consent exists, and there is reason to believe that the consent actually existed in the case at bar, but Maria's husband has explained his position, and the reasons therefor are very weak, but I can conceive and understand the situation of Adriano. Moreover, let us suppose that Adriano is a coward, and was afraid of Vicente without any cause for it. It is true that he had no reason for fear, but the fact that he was a coward does not deprive
39 him of his rights, and I think that he is within the law in filing his complaint at this time.

Having decided the question of the consummation, also the question of separation and consent, I must observe that there is a further question regarding the guilt of the defendant Vicente, which must be mentioned, and which does not apply to the defendant Maria: That is, that he was aware of the fact that she was married. As to the woman, sometimes she said that she didn't consider herself legally married, and sometimes she said that she intended to secure a divorce. Referring to the defendant Vicente it is not possible to believe that he, living in the same town, did not know that Maria and Adriano were married. As a matter of fact everybody knew that they were married. Both of them were married publicly by the Catholic Church, in the presence of the priest of the town, in 1896, and everybody knew it. It is possible that such a thing could happen in a large city, where a great portion of the inhabitants do not know each other, but I cannot believe that such a thing could occur in a small town like the one in question.

In view of the foregoing, it only remains for the Court to fix the penalty:

The law punishes the crime of adultery with a penalty of not more than six years imprisonment, and not less than two years, four months and one day. There is no necessity of imposing a severe penalty in the case at bar, or the maximum penalty prescribed by law, but the Court can not acquit the defendants upon the proof admitted. Therefore, it is the judgment of this court that Vicente Serra and Maria Obleno are guilty of the crime of adultery, as charged in the complaint, for which they must suffer the penalty of two years four months and one day of imprisonment, and that they each pay one-half of the costs.

Counsel for the defense having announced their intention to appeal to the Supreme Court, the said appeal is hereby allowed upon the filing of a sufficient bond in the amount of $2,000 Philippines currency, for each one of the defendants.

It is so ordered.

(Signed) ARTHUR F. ODLIN,
Judge of the Court of First Instance.

Albay, February 25, 1904.

Afterwards, to-wit, on the 7th day of March, 1904, came counsel for the defendants, and appealed from the judgment in said cause finding the defendants guilty, which said appeal is in the words and figures following, to-wit:

ADRIANO MORTIGA, Plaintiff,
v.
VICENTE SERRA and MARIA OBLENO, Defendants.

Notice of Appeal.

Now come the defendants in the above-entitled cause, through their attorney, and respectively state:

1. That on the 24th day of February, 1904, judgment was rendered by this court convicting the defendants in this case, Vicente Serra and Maria Obleno;

2. That not being satisfied with the said judgment, the defendants hereby give notice of appeal to the Supreme Court of justice.

(Signed) L. & C. IMPERIAL,
Counsel for Defendants.

Albay, P. I., March 7, 1904.

(Endorsed:) Received copy. (Signed) Macario Mercader, Counsel for plaintiff.

41 And afterwards, to-wit, on the 7th day of March, 1904, the following order was made by the Court of First Instance in said cause, which said order is in the words and figures following, to-wit:

ALBAY, *March* 7, 1904.

Approved. The appeal allowed as requested. At this time there appears before me Don Gregorio Santibaños, one of the sureties for appellants, and requests permission to withdraw from his bond. It is ordered that the bond be cancelled after the defendants have been surrendered to the sheriff, and the defendants shall remain in the custody of the sheriff until they give a new bond for two thousand pesos, Philippines currency, each.

(Signed) ARTHUR F. ODLIN, *Judge.*

Afterwards, to-wit, on the 2nd day of June, 1904, the said cause was duly forwarded to the Clerk of the Supreme Court by letter of transmittal, which said letter of transmittal is in the words and figures folowing, to-wit:

ALBAY, *June 2nd,* 1904.

The Clerk of the Supreme Court of the Philippine Islands, Manila.

SIR: I have the honor to forward to you herewith criminal cause No. 680, instituted by Adriano Mortiga against Vicente Serra and Maria Obleno, for the crime of adultery, by virtue of the appeal taken by the said defendants against the judgment of this court rendered therein.

Please acknowledge receipt.

Very respectfully,

(Signed) FELIX SAMSON,
Clerk of the Court of First Instance of Albay.

(Endorsed:) Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 13th day of June, 1904. J. E. Blanco, Clerk, by H. D. McGeorge, deputy, at 10.30 A. M.

41½ Afterwards, to-wit, on the 15th day of July, 1904, the defendants presented their brief in the Supreme Court of the Philippine Islands, accompanied by the following assignment of errors:

First Assignment of Error.

The complaint is null and void because it lacks the essential requisites provided by law.

Second Assignment of Error.

The proof taken at the trial does not show that the defendant Vicente Serra is guilty beyond a reasonable doubt, and the court erred in not acquitting him.

Third Assignment of Error.

The proof taken during the trial does not show that the accused, Maria Obleno, was guilty beyond a reasonable doubt, and the court erred in not acquitting her.

42 Afterwards, to-wit, on the 24th day of March, 1905, the Supreme Court met in public session, and the hearing was announced of case No. 2045, Adriano Mortiga *v.* Vicente Serra *et al*, for adultery. No counsel appeared on behalf of either side. The case was considered as submitted, and taken under advisement.

Afterwards, to-wit, on the 20th of September, 1905, the Supreme Court of the Philippine Islands announced its decision on the merits of the said case, No. 2045, Adriano Mortiga *v.* Vicente Serra and Maria Obeleno, which said decision is in the words and figures following, tō-wit:

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

No. 2045.

ADRIANO MORTIGA
v.
VICENTE SERRA and MARIA OBLENO.

WILLARD, *J.*:

The evidence both for the government and for the defendants proved that the latter had been living together as husband and wife since the year 1899.

Of the assignments of error made by the defendants in this court, the first one to the effect that the husband never made the complaint in the action, is not supported by the record. That record shows that on the 15th day of January, 1904, he signed, swore to and presented to the justice of the peace of Camalig a written complaint.

The record also shows that on the 24th of February, 1904,
43 when the proceedings were remitted by the justice of the peace to the Court of First Instance, another written complaint was presented, signed by his attorney and by himself, and sworn to.

Other objections to the complaint based upon an insufficient statement of the facts constituting the offense can not be considered here, because they were not presented in the court below. (U. S. *v.* Sarabia, 3 Off. Gaz. No. 29.)

The evidence in the case is sufficient to show that the defendant, Vicente Serra, knew that his codefendant was married. They lived together in the same pueblo with the complaining witness. The mother of the defendant Maria, a witness for the defense, testified that when the relations between the defendants commenced, they fled from Camalig to Marinduque.

The principal claim of the defendants is that the husband consented to the adultery. We do not think that this is established by the evidence. The husband testified that he had never consented to these illicit relations, and he stated that on account of the official positions occupied by the defendant Vicente, and for other reasons, he did not commence proceedings in court before 1904, because he feared that such action on his part would place him in a dangerous position. The offense was committed in 1899, during the time of the revolutionary government in Albay. At that time the defendant Vicente was a major under General Paua. When the revolutionary government was overthrown and the American government established, the defendant Vicente was made chief of police of the town of Camalig. After he had ceased to be chief of police he was still accustomed to carry a revolver. About this time also occurred the reconcentration in Albay. We have already held in the case of Gali *v.*

Sahagun, 1 Off. Gaz. 658, that a delay of seven months in
44 presenting a complaint was not sufficient evidence to prove that the husband had consented to the adultery, and in this case, considering the unsettled state of affairs in Albay in 1899, and for some time thereafter, and the authority which the defendant exercised in the town, we do not think it can be said that the failure of the husband to present a complaint proved that he gave such consent to the adultery as is mentioned in the Penal Code.

The penalty which the law provides for this offense committed under the circumstances shown in this case, should have been imposed in the medium grade, and we fix it at three years six months and twenty-one days. The judgment of the court below is modified by imposing that sentence instead of the one imposed by the court below, and with such modification the said judgment is affirmed, with the costs of both instances against the appellants.

Afterwards, to-wit, on the 23rd day of September, 1905, came W. A. Kincaid, counsel for defendants and appellants, and filed the following exception to the decision of the Court, which said exception is in the words and figures following, to-wit:

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

ADRIANO MORTIGA, Plaintiff and Appellee,
v.
VICENTE SERRA and MARIA OBLENO, Defendants and Appellants.

Come now the defendants and appellants, and except to the decision of this court made and entered in this case, and therefore pray the Court to admit the said exception as taken in due form and time.

Manila, September 22, 1905.

(Signed) W. A. KINCAID.

(Endorsed:) Filed in the clerk's office of the Supreme Court of the Philippine Islands this 23rd day of September, 1905. J. E. Blanco, Clerk, by H. D. McGeorge, deputy, at 10.30 A. M.

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Afterwards, to-wit, on the 26th of September, 1905 the Supreme Court adopted a resolution admitting the exception filed by the defendants and appellants against the decision of the said court, which said resolution is in the words and figures following, to-wit:

Report having been made upon the pleading filed by Attorney Kincaid in case No. 2045, Mortiga *v.* Serra *et al.*, for adultery, excepting to the decision of this court rendered in the said cause, it was resolved that the said exception be admitted and allowed as taken in due time and form, and let the same be attached to the record of the case.

Afterwards, to-wit, on the 28th day of September, 1905, the following petition was filed by W. A. Kincaid, counsel for defendants and appellants, asking for a rehearing, which said petition is in the words and figures following, to-wit:

ADRIANO MORTIGA, Plaintiff and Appellee,
v.
VICENTE SERRA and MARIA OBLENO, Defendants and Appellants.

Now come the defendants and appellants in the above-entitled cause, and ask this court to set aside its decision entered in this case on the 20th instant, for the following reasons:

1. Because by the decision of this court the defendants have been required to answer to a criminal charge without notice of the nature and cause of the complaint against them. The complaint in this case does not contain the essential requisites provided by law, and the

defendants, particularly Vicente Serra, have been convicted
46 upon a complaint which charges no crime.

2. Because the defendants have been required to answer a criminal accusation without due process of law.

3. Because the proof shows that the alleged husband of Maria Obleno had consented to the adultery of his wife.

Argument.

Being aware of the fact that according to the opinion of this court a person may be sentenced to death for the crime of murder, without an allegation in the complaint to the effect that the defendant had killed the deceased, and that a man can be called upon to answer for the crime of adultery without an allegation in the complaint to the effect that he knew that the woman was married; also that sections 9 and 10 of General Order 58, when they say that "the information or complaint may be amended in *substance* or *form* without leave of court at any time *before the defendant pleads;* and *thereafter* during the trial as to all matters of *form* at the discretion of the court, when the same can be done without prejudice to the rights of the defendant;" and that "no information or complaint is insufficient nor can the trial, judgment or other proceeding be affected by reason of a defect in a matter of *form* which does not tend to prejudice a substantial right of the defendant upon the merits," and that no distinction is drawn between defects of *form* and *substance,* and that the words "form" and "substance" are synonymous and mean the same thing; in other words that there is nothing substantial in an information or complaint, but that it is purely formal, and that the information or complaint is valid, although it does not allege any of the necessary elements of the crime, unless this court can determine that the substantial rights of the accused have in
47 some way been prejudiced, I do not desire to discuss this point again; but as to the second proposition I desire to enter my most energetic protest against the decision.

Perhaps it has escaped the attention of this court that the judgment in this case practically sentences to death a child of tender age, who can not survive if his parents have to serve three years in the penitentiary.

The complainant in this case lived for many years in the same town with the defendants. Knowing all the while of their relations he permitted them to continue until they had produced two children, one of whom is dead, while the other lives with his parents, in order to suddenly file a complaint against them for adultery.

Undoubtedly when implied consent is proven it has just as much force as express consent.

The complaining witness married the defendant, as he says, on the 25th of May, 1896, and the defendants commenced to live together in 1899. The complainant filed his complaint on the 15th of January, 1904, that is to say, five years later.

I am convinced that if the proof in this case is carefully examined it will appear beyond a reasonable doubt that the prose-

cuting witness impliedly consented to the relations between the defendants.

The law of adultery was promulgated for the purpose of vindicating the honor of the husband, and it was never the intention of the legislator to let him sleep for years, until as the result of the illicit union children be born, and then raise the question
48 under the pretext of vindicating his honor. The complaining witness in this case, when he affirms that he did not file the complaint because he was afraid of the defendant Serra, is not entitled to any credit, because in view of the other evidence introduced, what he says in regard to this matter is not true.

Again, according to most reliable evidence given in this case, the marriage in question was completely abortive, and it can almost be called a nonconsummated marriage, and if the court insists that the lapse of five or six years after the time the husband knows of his wounded honor is not sufficient to presume that he consented, then I wish the court would tell me what is to become of the little child? What blame can attach to this child, who would never have existed if the man who now pretends to vindicate his honor had acted in time? The judgment of this court deprives this child of both parents, and leaves it in a completely helpless situation.

In such cases it seems to me that the court should be inclined to presume the consent of the complainant; that instead of searching for pretexts, such as the statement of the complainant that he was afraid of the accused, in order to absolve him from his negligence, it should look for reasons for presuming consent in order to acquit the defendant.

I desire to call the attention of the court to the fact that such accusations, after the lapse of so many years, have no just motive, but that the object sought is very different from that of the vindication of marital honor, such as the extortion of money from the defendants, or revenge for some offense, real or imaginary.

I can also say, both as an argument and as an example to illustrate the ordinary object of such accusations, that the com-
49 plainant has offered to the undersigned, through an agent of his, to accept a sum of money as a consideration for the withdrawal of the accusation.

This does not appear from the record, but it is a fact well known to all attorneys who have had any experience in criminal cases of this nature. Ordinarily they have no moral or legal purpose.

Wherefore, your petitioner prays that this Honorable Court reexamine the evidence in this case, and acquit the defendants.

Manila, September 28, 1905.

W. A. KINCAID,
Attorney for Defendants and Appellants.

Afterwards, to-wit, on the 30th of September, 1905, the following resolution was adopted by the Supreme Court, denying the motion for a rehearing, which said resolution is in the words and figures following, to-wit:

Report having been made upon a petition presented by attorney Kincaid asking for a rehearing upon the judgment of this court in

case No. 2045, —— —— *vs.* Vicente Serra *et al*, for adultery, resolved that the petition be and the same is hereby denied.

Afterwards, to-wit, on the 4th of October, 1905, the defendants and appellants, through their attorney, W. A. Kincaid, excepted to the resolution of this court denying the motion for a rehearing upon the decision rendered in this case, which said exception is in the words and figures following, to-wit:

50 THE UNITED STATES, Plaintiff and Appellee,
v.
VICENTE SERRA and MARIA OBLENO, Defendants and Appellants.

Now come the defendants and appellants, and except to the resolution of this court denying their motion for a re-hearing upon the decision of this court in this case, and pray the court to allow the said exception to be filed.

Manila, October 4, 1905.

W. A. KINCAID,
Attorney for Defendants and Appellants.

(Indorsed:) Filed in the office of the Clerk of the Supreme Court of the Philippine Islands this 4th day of October, 1905, at 3.45 P. M. J. E. Blanco, Clerk, by H. D. McGeorge, deputy.

Afterwards, to-wit, on the 9th of October, 1905, the following judgment was entered, to-wit:

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

THE UNITED STATES OF AMERICA, Plaintiff and Appellee,
vs.
VICENTE SERRA and MARIA OBLENO, Defendants and Appellants.

Judgment. October 9, 1905. Judgment Book No. 2, Case No. 2045.

The court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the court upon the record, its decision and order for judgment having been filed on the 20th of September, A. D. 1905,

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Albay, dated the 25th of February, 1904, and from which the above-entitled appeal was taken,
be, and the same is hereby affirmed, and the defendants are
51 condemned to three years six months and twenty-one days imprisonment, with costs of both instances, the costs of this court amounting to $12 gold.

It is further ordered that the said cause be remanded to the Court of First Instance for the corresponding effect.

(Signed) BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

Afterwards, to-wit, on the 9th of October, 1905, there was filed in the clerk's office of said court in the above-entitled cause, an exception to the final judgment entered therein, said exception being in the words and figures following, to-wit:

ADRIANO MORTIGA
v.
VICENTE SERRA and MARIA OBLENO.

Now come the defendants and appellants and except to the final judgment entered in this case, and therefore ask this Honorable Court to admit the said exception as filed in due time and form.

Manila, October 9, 1905.

(Signed) W. A. KINCAID,
Attorney for Defendants and Appellants.

(Indorsed:) Filed in the Clerk's Office of the Supreme Court of the Philippine Islands this 9th day of October, 1905, at 3.30 P. M. J. E. Blanco, Clerk, by H. D. McGeorge, deputy.

Afterwards, to-wit, on the 12th of October, 1905, a resolution was adopted by the Supreme Court admitting the exception of defendants and appellants to the final judgment in said cause, which resolution is in the words and figures following, to-wit:

Report having been made upon the exception presented by attorney Kincaid to the final judgment of this court in case No. 2045,
52 —— —— *vs.* Vicente Serra *et al.*, for the crime of adultery, and asking at the same time that the said exception be admitted as filed in due time and form, resolved that the said exception be allowed and filed with the record of this case.

Afterwards, to-wit, on the 12th day of October 1905, there was filed in the Clerk's Office of said court, in the above-entitled cause, a petition for a writ of error, said petition being in the words and figures following, to-wit:

53 In the Supreme Court, Philippine Islands.

ADRIANO MORTIGA, Plaintiff and Appellee,
v.
VICENTE SERRA and MARIA OBLENO, Defendants and Appellants.

Come Vicente Serra and Maria Obleno, defendants and appellants in the above-entitled cause, and represent:

I.

That judgment has been rendered in said cause by which a judgment of the Court of First Instance convicting petitioners for the offense of adultery has been affirmed, and a penalty imposed upon them by the Court of First Instance increased from two years four months and one day of imprisonment, to three years six months and twenty-one days of imprisonment, and they have been convicted of said offense in violation of the Philippines Bill, in that they have not been advised of the nature and cause of the accusation against them, and have been convicted of a criminal offense without due course of law.

II.

Wherefore, petitioners pray that they be granted a writ of error from the Supreme Court of the United States to the Supreme Court of these Islands, with a supersedeas of the judgment, and that
54 upon the execution and approval of a bond in such sum as may be deemed sufficient, conditioned as required by law, they be admitted to bail pending such writ of error, in order that the judgment may be revised by the Supreme Court of the United States upon the assignment of errors presented with this petition.

They also pray that the records of the cause be ordered translated from Spanish to English in conformity with the rule prescribed by the Supreme Court of the United States.

W. A. KINCAID,
Attorney for Petitioners.

Afterwards, to-wit, on the 12th day of October, 1905, there was filed in the clerk's office of said court an assignment of errors in said cause, which said assignment of errors is in the words and figures following, to-wit:

Assignment of Errors.

In the Supreme Court of the United States.

In the Matter of the Petition of VICENTE SERRA and MARIA OBLENO, Plaintiffs in Error,
vs.
ADRIANO MORTIGA, Defendant in Error.

Come Vicente Serra and Maria Obleno and say that in the record and proceedings in the above-entitled case there is manifest error in this, to-wit:

I.

It appears that Vicente Serra and Maria Obleno, after having been convicted by the Court of First Instance of the Philippine Islands for the crime of adultery, and after having been placed in
55 jeopardy of punishment for said crime, by a trial duly and regularly had, and after there had been imposed upon them

by said Court of First Instance the penalty of two years, four months and one day imprisonment, the Supreme Court of the Philippine Islands, upon an appeal of said cause from said Court of First Instance to said Supreme Court, increased the penalty imposed upon them by the said Court of First Instance to three years six months and twenty-one days imprisonment.

II.

It appears that Vicente Serra and Maria Obleno have been convicted of the offense of adultery without having been advised of the nature and cause of the accusation against them.

III.

It appears that Vicente Serra and Maria Obleno have been convicted of the offense of adultery without due course of law.

IV.

It appears that Vicente Serra has been convicted of the offense of adultery on a complaint or information which did not show that he had committed said offense.

V.

It appears that Maria Obleno has been convicted of the offense of adultery upon a complaint or information which did not charge her with the commission of said offense.

VI.

It appears that Vicente Serra and Maria Obleno have been convicted of the crime of adultery after said offense had been pardoned by the prosecutor, the alleged husband of Maria
56 Obleno.

Wherefore, said Vicente Serra and Maria Obleno pray that the judgment of the Supreme Court of the Philippine Islands be reversed and the cause remanded to the said court with instructions to acquit the defendants.

W. A. KINCAID,
Attorney for Plaintiffs in Error.

Afterwards, to-wit, on the 8th day of November, 1905, there was filed in the clerk's office of said court in the above-entitled cause a bond, which said bond is in the words and figures following, to-wit:

UNITED STATES OF AMERICA, *Philippine Islands:*

ADRIANO MORTIGA, Plaintiff and Appellee,
v.
VICENTE SERRA and MARIA OBLENO, Defendants and Appellants.

PHILIPPINE ISLANDS, *Province of Albay:*

Whereas, Maria Obleno, one of the defendants and appellants in the above-entitled cause, has been convicted by the Supreme Court of the Philippine Islands of the crime of adultery, and has been allowed a writ of error from the Supreme Court of the United States to the Supreme Court of the Philippine Islands to have the said judgment reversed; and

Whereas, by virtue of an order made and entered by the Honorable Charles A. Willard, Associate Justice of the Supreme Court of the Philippine Islands, who granted the said writ of error,
57 the defendant Maria Obleno is entitled to her liberty pending such writ of error, upon the execution of a bond in the sum of 5,000 pesos, payable to the defendant in error:

Now, therefore, we, Maria Obleno as principal, and Marta Navares, Santiago Solano and Teodoro Navarrete as sureties, do hereby jointly and severally undertake that the above Maria Obleno will pay the fine that the Supreme Court of the United States may impose upon her, or that she will appear for the judgment of said court, or in the event that the case be remanded for a new trial she will appear before the court to which the case may be remanded, and hold herself amenable to the orders and processes of said court; or if she fails to perform any of these conditions that she will pay to Adriano Mortiga the amount of 5,000 pesos, Philippines currency.

In witness whereof, we have hereunto subscribed our names this 4th day of November, 1905, A. D.

MARIA OBLENO.
MARTA NAVARES.
SANTIAGO SOLANO.
TEODORO NAVARRETE.

PHILIPPINE ISLANDS, *Province of Albay, ss:*

Before me, the undersigned authority, on this date personally appeared Maria Obleno, Marta Navares, Santiago Solano and Teodoro Navarrete, who declared under oath that they are the persons who subscribed the foregoing bond, and that they are worth the amount specified in the undertaking, over and above all just debts, obligations and property exempt from execution.

MARIA OBLENO.
MARTA NAVARES.
SANTIAGO SOLANO.
TEODORO NAVARRETE.

Subscribed and sworn to before me this 4th day of November, 1905.

PABLO FIRAZA,
Clerk of the Court of First Instance and ex-Officio Notary Public, Albay Province, P. I.

[SEAL.]

Approved:
CHARLES A. WILLARD,
Associate Justice Supreme Court of the Philippines.

58 UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, do hereby certify the above and foregoing to be a true and correct translation of a transcript of the record and proceedings had in case No. 2045, in which the United States of America, Macario Mercader and Adriano Mortiga are plaintiffs, and Vicente Serra and Maria Obleno are defendants, as the same appears from the records and files now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, in my office at Manila, in the Philippine Islands, this 20th day of December, 1905.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

59 Original.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the Philippine Islands, before you, or some of you, between Adriano Murtiga, plaintiff and appellee, and Vicente Serra and Maria Obleno, defendants and appellants, a manifest error hath happened to the great damage of the said Vicente Serra and Maria Obleno, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, we command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second day of January 1906, in the said Supreme Court, to be then and there

held, that the record and proceedings aforesaid being in-
60 spected the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States the Second day of November in the year of our Lord, 1905.

[Seal of Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court
of the Philippine Islands.

The foregoing writ of error is allowed and it shall operate as a supersedeas of the judgment complained of, and upon the execution of a bond by Vicente Serra in the sum of five thousand pesos and by Maria Obleno in the sum of five thousand pesos, payable to the defendant in error, conditioned as required by law, to be approved by me, they shall be respectively entitled to their liberty pending such writ of error.

CHARLES A. WILLARD,
Associate Justice of the Supreme Court
of the Philippine Islands.

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 2 day of Nov. 1905.
8.15 a. m.

J. E. BLANCO, *Clerk,*
By H. D. McGEORGE,
Deputy.

61 THE UNITED STATES OF AMERICA, *ss:*

To Adriano Murtiga, Defendant in error:

You are hereby cited and admonished to be in and appear at the Supreme Court of the United States, to be holden at Washington, within sixty days from the date of this citation, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the Philippine Islands, wherein Vicente Serra and Maria Obleno, are plaintiffs in error and Adriano Murtiga defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this second *Nov.* day of November in the year of our Lord 1905.

CHARLES A. WILLARD,
Associate Justice of the Supreme Court
of the Philippine Islands.

I admit the receipt of a copy of the above citation and accept service thereof as though regularly had this 6 day of Nov. 1905.

FELIX TERRES CASCUAT,
Attorney of Defendant in Error.

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 8th day of November, 1905.

J. E. BLANCO, *Clerk.*

62 UNITED STATES OF AMERICA, *Philippine Islands, ss:*

In obedience to the foregoing writ of error, I herewith transmit to the Supreme Court of the United States a true and complete transcript in English of the record and proceedings in the foregoing-entitled cause, this 20th day of December, 1905.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

Endorsed on cover: File No. 20,092. Philippine Islands Supreme Court. Term No. 202. Vicente Serra and Maria Obleno, plaintiffs in error, *vs.* Adriano Murtiga. Filed February 9th, 1906. File No. 20,092.